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Memorandum

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TO: Interested Persons

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SUBJECT: Fiscal Notes Considerations for Bills with Criminal Justice System Impacts

Summary

This memorandum provides an overview of issues considered by fiscal analysts for bills that impact the criminal justice system. Specifically, it provides an overview of Colorado's crime classifications and sentencing ranges, and of criminal justice impacts by state or local government agency. The memorandum has been updated for the 2023 legislative session.

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Crime Classifications and Sentencing

Under Colorado law, criminal offenses are classified by type, including felonies, misdemeanors, drug offenses, petty offenses, civil infractions, traffic offenses, and traffic infractions. The seriousness of a particular crime determines the classification and the potential sentence or fine that may be imposed on a convicted offender. The following section describes the various crime classifications used in Colorado law, the sentencing ranges for crimes in these categories, and provides fiscal analysis considerations and limitations.

Felonies

There are six felony classifications ranging from the most serious felonies, class 1, to the least serious felonies, class 6. State law specifies the term of imprisonment in the Department of Corrections (DOC) and fine penalty ranges for felonies, as shown in Table 1. After release from prison, persons convicted of a felony serve a mandatory period of parole. Additionally, some felonies are unclassified and subject to penalties outlined in statute.

Table 1
Felony Sentence and Fine Penalty Ranges

Felony Class	Minimum Prison Sentence	Maximum Prison Sentence*	Mandatory Parole	Fine Penalty Range
Class 1	Life imprisonment			
Class 2	8 years	24 years	3 or 5 years**	\$5,000 to \$1,000,000
Class 3	4 years	12 years	3 years	\$3,000 to \$750,000
Class 4	2 years	6 years	3 years	\$2,000 to \$500,000
Class 5	1 year	3 years	2 years	\$1,000 to \$100,000
Class 6	1 year	18 months	1 year	\$1,000 to \$100,000
Unclassified	Specified in statute	Specified in statute		

Source: Sections 16-11-901 and 18-1.3-401, C.R.S

* The legislature repealed the death penalty in 2020, and it is no longer a maximum sentence for class 1 felony convictions after July 1, 2020.

** Class 2 mandatory parole is three years if the crime was nonviolent and five years if crime was violent.

Extraordinary risk crimes. Certain crimes, such as aggravated robbery, child abuse, stalking, and human trafficking, are considered by state law to be crimes that present an extraordinary risk to society. The sentence for extraordinary risk felonies is increased as follows:

- by 4 years for class 3 extraordinary risk felonies (16 years maximum);
- by 2 years for class 4 extraordinary risk felonies (8 years maximum);
- by 1 year for class 5 extraordinary risk felonies (4 years maximum); and
- by 6 months for class 6 extraordinary risk felonies (2 years maximum).¹

Crimes of violence. Under state law, certain crimes such as murder, first or second degree assault, kidnapping, and aggravated burglary are considered crimes of violence. An offender convicted of a crime of violence must be sentenced to at least the midpoint of the range for an extraordinary risk felony minimum sentence and no more than twice the maximum of the range.² For example, the minimum sentence for a class 3 felony crime of violence is increased to 10 years, with a maximum sentence of 32 years.

Alternative sentences. Not all persons convicted of a felony will be sentenced to the DOC because state law authorizes alternative sentencing, such as pre-trial diversion, deferred sentencing, probation, or community corrections. In addition, state law allows a felony offender to be sentenced up to 90 days in county jail as a condition of probation.³ Prison sentences are more likely to be imposed for serious felony convictions, generally class 1 through 4 felonies. Alternative sentences are more likely, but not always, imposed for less serious felony convictions, generally class 5 and 6 felonies. The use of alternative sentences is at the discretion of the court and can vary according to the type and circumstance of the crime, and criminal history of the offender.

¹ Section 18-1.3-401 (10), C.R.S.

² Section 18-1.3-406, C.R.S.

³ Section 18-1.3-202 (1)(a), C.R.S.

Fiscal considerations for felony offenses. For bills with felony offenses, including drug felonies (described below), the fiscal note considers potential DOC impacts by analyzing comparable crime sentencing data obtained from the Judicial Department. If sentencing data indicate a prevalence of the crime, the fiscal note then uses data obtained from the Division of Criminal Justice in the Department of Public Safety regarding average length of stay by offense type in prison and parole, multiplied by the prison operation and parole costs. To the extent that alternative sentences are used instead of incarceration in the DOC, estimated fiscal impacts to house a felony offender will decrease. However, because of judicial discretion, the use of alternative sentencing cannot be estimated in most cases.

Misdemeanors

There are two misdemeanor classifications ranging from the most serious, class 1, to the least serious, class 2. Offenders convicted of a misdemeanor may be sentenced to a term of imprisonment in county jail, may be required to pay a fine, or both, as shown in Table 2. Additionally, many misdemeanor crimes are unclassified and subject to penalties outlined in statute. Similar to felonies, sentencing decisions are at the discretion of the court and alternative sentences may be used. The use of alternative sentences, such as probation, is more likely for misdemeanor offenders. The maximum consecutive sentence to the county jail for misdemeanor crimes charged in a single case is 24 months.⁴

Table 2
Misdemeanor Sentence and Fine Range

Misdemeanor Class	Maximum Misdemeanor Sentence
Class 1	364 days, up to \$1,000, or both
Class 2	120 days, up to \$750, or both
Unclassified	Specified in statute

Source: Section 18-1.3-501, C.R.S

Fiscal analysis considerations for misdemeanor. For bills with misdemeanor offenses, including drug misdemeanors (described below), the fiscal note will consider potential state and local impacts based on comparable crime sentencing data obtained from the Judicial Department. Because offenders convicted of a misdemeanor are not sentenced to the DOC, impacts to the state are generally driven by court and probation workload. Misdemeanors primarily impact county jails, district attorneys, and the Denver County Court, all paid for by local governments.

Drug Offenses

Drug offenses may be a felony or misdemeanor and are also classified by level. Drug felonies are classified as levels 1 through 4, with a level 1 drug felony being the most serious. Drug misdemeanors are either a level 1 or level 2 misdemeanor, with a level 1 drug misdemeanor being the most serious.

⁴ Section 18-1.3-501, C.R.S.

Offenders convicted of a felony drug offense may receive a sentence to the DOC and assessed a fine, as shown in Table 3. Offenders convicted of a misdemeanor drug offense may be sentenced to a term of incarceration in county jail, to pay a fine, or both, as shown in Table 4. Starting January 1, 2023, it is the intent of the General Assembly to classify most drug possession as a misdemeanor offense with different sentencing options and limited incarceration penalties.⁵

Table 3
Drug Felony Presumptive Sentence and Fine Penalty Range

Drug Felony Level	Minimum Prison Sentence	Maximum Prison Sentence	Mandatory Parole	Fine Penalty Range
Level 1	8 years	32 years	3 years	\$5,000 to \$1,000,000
Level 2	4 years	8 years	2 years	\$3,000 to \$750,000
Level 3	2 years	4 years	1 year	\$2,000 to \$500,000
Level 4	6 months	1 years	1 year	\$1,000 to \$100,000

Source: Section 18-1.3-401.5, C.R.S

Table 4
Drug Misdemeanor Sentence and Fine Penalty Range

Drug Misdemeanor Level	Minimum Sentence	Maximum Sentence
Level 1	6 months, \$500, or both	18 months, \$5,000, or both
Level 2	\$50	364 days, \$750, or both

Source: Section 18-1.3-501, C.R.S

Petty Offenses and Civil Infractions

Petty offenses and civil infractions are crimes considered to be less serious than a felony or a misdemeanor. There are two classifications in state law, the more serious petty offense and the less serious civil infraction. Offenders convicted of a petty offense may be sentenced to up to 10 days in county jail, a fine of up to \$300, or both.⁶ Offenders convicted of a civil infraction may be fined up to \$100.⁷ In addition, some petty offenses are unclassified, with penalties specified in statute for each offense.

Fiscal analysis considerations for petty offenses and civil infractions. Because offenders convicted of a petty offense may be fined, sentenced to jail, or both (or in the case of a civil infraction just a fine), and such decisions are subject to judicial discretion, the exact state and local government revenue and expenditure fiscal impact of bills addressing such crimes is indeterminate. In some cases, the fiscal note may provide an estimated range of impact based on comparable crime assumptions.

Traffic Offenses

State law classifies traffic offenses as either a misdemeanor traffic offense or a traffic infraction. There are two misdemeanor traffic offense classifications, class 1 and class 2, with a class 1 traffic misdemeanor being the most serious. There are also unclassified misdemeanor traffic offenses.

⁵ Section 18-1.3-501 (1)(d.5). C.R.S.

⁶ Section 18-1.3-503, C.R.S.

⁷ Section 18-1.3-503, C.R.S.

Sentencing and fine ranges for misdemeanor traffic offenses can be found in Table 5. Offenders may also be required to perform a certain number of hours of community or useful public service.

Table 5
Traffic Misdemeanor Sentence and Fine Penalty Range

Traffic Misdemeanor Class	Minimum Jail Sentence	Maximum Jail Sentence	Fine Penalty Range
Class 1	10 days	1 year	\$300 to \$1,000
Class 2	10 days	90 days	\$150 to \$300

Source: Section 42-4-1701, C.R.S.

Serious crimes involving a vehicle may be classified as a felony instead of as a traffic offense using the felony classifications found in Table 1. For example, vehicular homicide is classified in state law as either a class 3 or 4 felony depending on the circumstances of the crime.

Traffic infractions

Traffic infractions are more minor in nature and are classified as class A, class B, or unclassified infractions, with class A infractions being the most serious. Traffic infractions have a penalty range from \$15 to \$100, unless otherwise provided in statute.⁸ Any penalty collected from a traffic infraction is credited to the Highway Users Tax Fund (HUTF), with 65 percent going to the Department of Transportation, 26 percent to counties, and 9 percent to municipalities. Each offender must also pay a surcharge amount as specified in statute. Where there is no specified surcharge in statute, the surcharge is \$4. Additionally, the Department of Revenue can assess points to a driver license, which could lead to the suspension or revocation of the license. Points cannot be assessed to a driver license for any class B traffic infractions.

Fiscal analysis considerations for traffic offenses. Offenders of a traffic offense or infraction may be fined, sentenced to jail, or both, and such decisions are subject to judicial discretion. As a result, state and local government impacts are indeterminate. In some cases, the fiscal note may provide an estimated range of impact based on comparable crime assumptions. For traffic infractions, an offender may either pay their citation directly to the Department of Revenue, or may go to court and pay the citation to the court.

Criminal Justice Impacts by State or Local Government Agency

The following section explains the types of potential criminal justice impacts that may be found in the fiscal analysis of bills with criminal offenses. State and local government impacts will vary depending on the circumstances of the crime and prior criminal history of the offender. Impacts may further vary depending on the exact nature of the legislation being considered. Fiscal notes for bills with criminal justice impacts will estimate all such impacts based on the language of the bill and perform an analysis of comparable crime data.

⁸ Section 42-4-1701, C.R.S.

Judicial Department

Potential fiscal impacts to the Judicial Department are considered and may be identified in the fiscal analysis of bills that have a criminal offense. These include fine and fee revenue, trial court-related expenditures, probation supervision costs, and indigent defense. These potential impacts are described in more detail below.

Revenue. The Judicial Department collects criminal fine and administrative fee revenue from felony, misdemeanor, drug, and petty offense convictions. This revenue is subject to TABOR.

- **Criminal fines.** Offenders sentenced for felony, misdemeanor, drug, petty offense, and civil infraction crimes may be required to pay a criminal fine penalty imposed by the court. Criminal fine revenue is deposited into a cash fund, and the amount of the fine penalty is at the discretion of the judge with input from the district attorney and, sometimes, local law enforcement. While fine penalties can range from as little as \$50 up to \$1 million, actual fines imposed are based on an offender's ability to pay. The total amount of revenue collected for any given classification of crime is generally less than \$5,000. As a result, for fiscal note purposes, most criminal fines are considered as having a minimal revenue impact, regardless of the classification of the criminal offense resulting from the legislation.
- **Court and administrative fees.** Court and administrative fees may be imposed for a variety of court-related costs, including drug or sex offender surcharges, victim compensation, restitution, supervision costs, and late fees. Revenue collected from court and administrative fees is deposited into the state General Fund, various cash funds, and also shared with the local government in which the crime was committed. Such fees vary based on the circumstances of the crime and may be mandatory or subject to the discretion of the judge. Given this, the exact revenue impacts from court and administrative fees cannot be predicted in the fiscal analysis of bills containing criminal offenses, but are assumed to be minimal based on historical amounts of court fees imposed for similar crimes.
- **Probation fees.** Adult offenders on probation must pay a probation supervision fee of \$50 per month, which is considered to be a minimal revenue impact in most bills. Offenders sentenced to probation are not released from probation until all court-ordered costs have been paid, and an offender may be placed on unsupervised probation after his or her initial supervised probation period has been served if he or she is still paying court costs.

Trial courts. The trial courts in the Judicial Department hear criminal cases either in a district or county court. District trial courts hear felony criminal cases, while county courts hear misdemeanor and petty offense cases. With the exception of Denver County Court, which has separate constitutional authority and is administered and paid for by the City and County of Denver, all county courts are part of the state court system and are administered and paid for by the Judicial Department. Therefore, most county court caseload and fiscal impacts are state Judicial Department impacts.

Caseload and FTE standards. The Judicial Department conducts periodic caseload studies to determine the number of cases various judges are able to handle per year. The fiscal note uses these caseloads and the anticipated number of court filings under a bill to determine appropriate staffing

levels. According to Judicial Department caseload standards, a district court judge can manage 511 felony cases per year depending on the type of case, while a county court judge can manage between 2,136 and 2,708 misdemeanor cases per year. The misdemeanor range does not include traffic cases, driving under the influence cases, domestic violence cases, and problem solving courts as these cases and courts have various other standards. Because of the ability of the court to manage its criminal docket and the costs associated with adding new judicial officers, fiscal notes generally use a 0.3 FTE threshold for adding new judicial FTE, unless special circumstances exist. Generally, an appropriation to the Judicial Department will be required for bills with a felony caseload impact greater than 153 cases or a misdemeanor caseload impact of greater than 641 cases. Because the number of judges must be increased through specific legislation, additional judicial officers identified in a fiscal note are hired as magistrates. Workload for bills with an FTE impact of less than 0.3 FTE can be accomplished within existing appropriations.

Judicial support staff. Support staff is included for any new judicial officer FTE. These staff include a judicial assistant, law clerk, and court reporter for each district court judge, and a judicial assistant and assistant clerk for each county court judge. Therefore, an additional 3.0 FTE are required for each additional 1.0 FTE judicial officer at the district court level and additional 2.0 FTE for each additional 1.0 FTE judicial officer at the county court level.

Operating and capital outlay costs. Hiring judicial officers also results in per FTE standard operating costs of \$2,950, capital outlay costs of \$7,200, and law library materials, travel, and facility and furnishing costs of \$84,979.

Probation division. Offenders convicted of misdemeanor and petty offenses, as well as felony offenders in limited circumstances, may be sentenced to probation. The Division of Probation in the Judicial Department supervises these offenders. State law does not require specific periods or types of probation, and offenders sentenced may be subject to intensive supervision, regular supervision, or unsupervised supervision. The average monthly hours of probation supervision required are determined by the courts and can vary by case. On average, workload to supervise one adult is 3.16 hour per month, or 37.92 hours per year. For juveniles, the average workload is 4.72 hours per month, or 56.64 hours per year. Costs to the division will vary based on an individual's risk level or program placement. The average cost for regular probation supervision is \$1,698 per year per adult and \$3,525 per year per juvenile. The cost for intensive probation supervision is \$4,417 per year per adult and \$6,608 per year per juvenile. Because it is not known if future offenders will be sentenced to probation and whether regular or intensive supervision will be required, it is generally assumed that additional appropriations for probation supervision will be addressed through the annual budget process as needed.

Indigent defense. Defendants who cannot afford representation in a criminal case will be appointed a lawyer from either the Office of the State Public Defender (OSPD) or the Office of Alternate Defense Counsel (OADC). Both agencies are housed in the Judicial Department, but operate independently. Costs for both agencies are driven by the number and types of cases with indigent defendants. The OSPD spends an average of \$646 per case, while the OADC spends an average of \$1,581 per case.⁹ The OSPD hires and uses in-house attorneys for indigent defense, while the OADC contracts with private

⁹ Joint Budget Committee Staff, Judicial Department Budget Briefing, FY 2022-23

attorneys to represent indigent defendants and only takes a case if the OSPD has a conflict of interest. The OADC's contract attorneys are paid different rates depending on the type of case. Currently, the average contract attorney rate is \$85 per hour, but rates are typically higher for felony cases. Since it is unknown when indigent defense will be required by a bill and, further, whether or not a conflict of interest will exist that necessitates the involvement of the OADC, fiscal notes typically assume that any increase in appropriations for either agency will be addressed through the annual budget process based on actual changes in caseload.

Department of Corrections

Potential fiscal impacts to the DOC are identified in the fiscal analysis of bills that include a felony offense. These include prison operating, capital construction, and parole costs, as well as county jail reimbursement impacts, where applicable. Current law allows the DOC to place certain offenders in private contract prisons, for which no state capital construction costs are incurred. Offenders convicted of more serious offenses, typically class 1 and 2 felonies, are most likely to be placed in a state-run prison. More information on DOC impacts can be found below.

Statutorily required analysis. An offender convicted of a felony offense and sentenced to the DOC will occupy a prison bed. In the past, state law required the General Assembly to consider the need to appropriate funds to cover increased operating, capital construction, and parole costs for five fiscal years when legislation is estimated to increase periods of imprisonment in state correctional facilities. However, with the passage of House Bill 22-1330, the requirement to make a five-year appropriation was suspended until July 1, 2025.¹⁰ While the General Assembly is not required to appropriate funds for five fiscal years, state law still requires the fiscal note to show five years of capital construction, operating, and parole costs.¹¹

Operating costs. There are two levels of operating costs at the DOC: one for private-contract prisons and one for state-run prisons.

- **Private prisons.** The state currently has two private prisons in operation, Crowley County Correctional Facility and Bent County Correctional Facility, both operated by CoreCivic. Offenders placed in a private contract prison cost the state \$74.25 per offender, per day, or \$27,101 annually.
- **State prisons.** Offenders placed in a state prison range in costs depending on custody level and facility. The average daily cost is \$155.52 per offender, or \$56,766 annually.

For the 2023 session, fiscal notes will assume that changes in prison population under a bill will occur in private prisons, both for bills that increase or decrease periods of incarceration. This assumption is based on the current population trends and expected population management strategies used by the DOC. In FY 2023-24, DOC's operating costs in fiscal notes for bills with felony offenses will be calculated using an assumed daily private prison operating cost (\$74.25) multiplied by the average

¹⁰House Bill 22-1330

¹¹ Section 2-2-701 C.R.S.

length of stay expected for the crime. The bed rate may be adjusted to account for unique factors in a specific bill or in an affected prison facility or offender population.

For offenses committed on or after the effective date of a bill, no impact is shown in the first year because of the estimated time for criminal acts to occur, filing of charges, trial, disposition, and sentencing. If any first-year impacts are incurred, it is assumed that any required changes in appropriations will be addressed through the annual budget process.

Capital construction costs. Fiscal notes will show the estimated capital construction costs for each additional prison bed calculated at \$178,471 per bed. This estimate is based on the most recent cost to build a DOC facility divided by the number of prison beds in that facility. This amount may be appropriated at the discretion of the General Assembly; however, based on current population trends, fiscal notes will assume that these appropriations will not be made. Because capital construction projects are overseen by the Capital Development Committee, these funds must first be transferred from the General Fund to the Capital Construction Cash Fund and are then appropriated to the Corrections Expansion Reserve Fund. If appropriated, these funds may be used by the DOC for prison construction, expansion, or renovation projects that are approved by the General Assembly.

Parole. Offenders convicted of a felony and sentenced to the DOC will serve a term of parole upon completion of their prison sentence. The cost to supervise an offender on parole is \$21.23 per day, or \$7,749 per year. Parole impacts are determined by taking the parole cost per day multiplied by the average parole length of stay as determined and published annually by the Division of Criminal Justice.

County jail reimbursement. The DOC is required to reimburse county jails for holding state prisoners in county jail. State prisoners may be held in county jail post-conviction while awaiting transport to a DOC facility, at the request of a judge before appearing in court, or on a long-term basis under certain contractual agreements. State offenders may also be held in county jail for a parole violation either as punishment or while awaiting a parole revocation hearing or hearing for a new crime. State law requires the state to reimburse county jails for the costs of housing state inmates. For the upcoming fiscal year, it is assumed that the state will reimburse county jails at a daily rate of \$66.87.

Department of Public Safety—Community Corrections

Community corrections programs are state-funded and locally administered programs that place offenders in a community housing setting, commonly known as halfway houses. Offenders may be sentenced by the courts directly to a community corrections program or placed in a community corrections program on the recommendation of the executive director of the DOC or the Parole Board. Offenders placed in community corrections are typically felony offenders who have been convicted of a less serious felony, generally a class 4, 5, or 6 felony. Offenders are either in residential placement, where the offender lives at the community corrections facility, or nonresidential placement, where the offender lives outside of a facility and checks in with case workers. The state establishes a per diem rate to contract with local community corrections boards to provide a specific number of beds. Table 6 shows the state per diem rate in FY 2022-23 for each placement type.

Table 6
Total State Per Diem by Bed Placement

Placement Type	Total Per Diem
Residential Base Rate	\$67.00
<i>When meeting recidivism performance targets <u>or</u> completion performance targets</i>	\$67.67
<i>When meeting recidivism performance targets <u>and</u> completion performance targets</i>	\$68.34
Intensive Residential Treatment (base)	\$99.00
Inpatient Therapeutic Communities (base)	\$99.00
Residential Dual Diagnosis Treatment (base)	\$99.00
Sex Offender (base)	\$99.00
Standard Non-residential	\$9.65
Outpatient Therapeutic Communities	\$26.86

Source: 2022 Long Appropriations Bill.

In the past, community correction programs could charge offenders up to \$17 per day for residential placement and up to \$3 per day for nonresidential. For FY 2022-23, the General Assembly chose to appropriate additional funds to community correction programs to remove this fee.¹² Community correction boards and programs are authorized to accept or deny the placement of any offender sentenced to or recommended to a community corrections program. As a result, it is unknown how many offenders will be placed in community corrections instead of serving time in prison, on parole, or on probation, and such fiscal impacts cannot be estimated. To the extent that an offender is sentenced to community corrections instead of the DOC, state expenditures associated with the incarceration of the offender will decrease because community corrections per day operating costs are less than that of the DOC, and the length of stay in community corrections is also shorter.

Department of Revenue—Division of Motor Vehicles

The Division of Motor Vehicles (DMV) in the Department of Revenue administers motor vehicle enforcement throughout the state by tracking and collecting traffic fines and penalties issued by law enforcement.¹³ As a result, legislation that creates or modifies a traffic offense will typically result in computer programming costs for the DMV.

The DMV also oversees the suspension, revocation, and reinstatement of driver licenses¹⁴ and employs hearing officers to adjudicate these cases. As a result, legislation that creates or modifies the points system may result in the need for additional hearing officers.

¹² House Bill 22-1329, footnote 107.

¹³ Section 42-4-1701 (5), C.R.S.

¹⁴ Section 42-4-127 C.R.S.

County Jails

County jails are run by the county sheriff and paid for by counties. These facilities house defendants awaiting trial, misdemeanor and petty offenders sentenced to jail, and offenders who commit a parole violation. Of the 64 counties in Colorado, 57 maintain a county jail, while Dolores, Hinsdale, Kiowa, Mineral, Ouray, Philips, and San Juan counties contract with other county jails.

Based on a recent study, the cost to house an offender in a county jail varies from about \$45 to \$350 per day. Because there are so many sentencing variables, fiscal notes typically indicate whether a bill will increase or decrease costs to county jails.

City and County of Denver

Denver County Court is funded and administered by the City and County of Denver, rather than the state trial court system operated by the Judicial Department. As a result, misdemeanor and petty offense cases for offenders arrested in Denver impact that local government's revenue and expenditures instead of the state's.

Municipal Court

Municipal charters may include criminal offenses that are unique to that municipality. The classifications and penalties for such municipal offenses vary by municipality. Typically, an offender convicted of a municipal offense is ordered to pay a fine; however, some municipal offenses could result in a sentence to county jail. Trials and hearings for such crimes are held in municipal court at the expense of the municipality, with fines and court administrative fees being collected by the municipality. Traffic infractions issued by municipal police, if challenged, are also heard in municipal court. Offenders charged with a municipal crime with a potential jail sentence are entitled to a public defender if they are deemed indigent. All related costs are paid by the municipality.